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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,	)	
	)	No. 4:15-cr-6049-EFS-16
Plaintiff,	)	
	)	MOTION TO SUPPRESS
vs.	)	DEFENDANT'S SEIZURE ON
	)	September 6, 2013
EDGAR OMAR HERRERA FARIAS,	)	
	)	Hearing: September 18, 2018 at
Defendant.	)	9:00 a.m. at Richland
	)	WITH ORAL ARGUMENT

The Defendant, Edgar Omar Herrera Farias, moves to suppress evidence of his seizure on September 6, 2013 in Mount Vernon, Washington, for violation of the Fourth Amendment of the United States Constitution including testimony regarding his seizure and surrounding facts and circumstances stated hereinafter and 27 photographs taken at the time. The photographs were provided to the undersigned on September 13, 2018 my email from the Government.

BACKGROUND

Discovery at Bates 1000213-66 provides the following:

1 On September 6, 2013, a Special Agent for the DEA contacted Skagit County  
2 law enforcement that a white Ford Ranger located at a Mount Vernon, Washington  
3 hotel contained drugs. Detectives began surveillance of the vehicle. "As surveillance  
4 was watching the vehicle a tow truck hooked up the vehicle. The tow truck was  
5 followed to an apartment complex in Sedro Wooley, Washington where the truck was  
6 removed from the tow truck. Surveillance units continued to monitor the vehicle."  
7

8  
9 Surveillance was also currently going on at the Days Inn hotel. Two Hispanic  
10 males were observed "looking around the parking lot." They were later identified as  
11 Christian Martin Valdovinos and Mr. Herrera Farias. "They were by a maroon  
12 Cadillac ... The driver of the vehicle exited and was on a cell phone. A short time  
13 later all three subjects returned to the Cadillac." As the Cadillac was leaving it met  
14 with a black BMW. After the meeting the Cadillac left the hotel and traveled  
15 eastbound when "a Skagit County Deputy performed a traffic stop on the vehicle."  
16 The driver of the vehicle, Estevan Gustavo Villalobos, had a suspended driver's  
17 license. "A narcotics K-9 was called to the scene and conducted a sniff of the vehicle."  
18 The dog alerted to the vehicle. It was determined that the vehicle was going to be  
19 transported to a secure location and searched under the DEA's authority... DEA  
20 advised all three subjects were going to be detained during this investigation. The  
21 three subjects were transported to the Mount Vernon Police Department where they  
22 were placed in holding cells and interviewed."  
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1 During the search of the Cadillac agents “located a small amount of marijuana.  
2 While the Cadillac was being searched a K-9 sniff was conducted on the white Ford  
3 Ranger. The K-9 alerted to this vehicle.” The Ranger was “transported to a secure  
4 location and searched.” Agents searched the Ranger and located a pound of  
5 “suspected” methamphetamine and a handgun. “This was booked into their federal  
6 system.”  
7  
8

9 Mr. Herrera Farias was “released to the custody of the Border Patrol as he self-  
10 admitted to being illegally present in the United States without documentation  
11 allowing him to stay. The other two suspects were released with no further incident.”  
12

13 27 photographs were taken including the Washington State driver’s license of  
14 Mr. Herrera Farias and the suspected methamphetamine.  
15

16 The white Ford Ranger was registered to Rosa Granados, a co-defendant  
17 expected to testify at trial.  
18

19 The discovery does not disclose any probable cause for the traffic stop on the  
20 vehicle Mr. Herrera Farias was a passenger in. Nor does the discovery provide any  
21 testing of the suspected methamphetamine to determine if it is methamphetamine.  
22 Discovery does not provide information on the K-9’s training and reliability in order  
23 to be properly admissible as expert testimony under FRE 702. *United States v.*  
24 *Gadson*, 763 F.3d 1189. 1203 (9th Cir. 2014).  
25  
26

## ARGUMENT

“A person is seized by police and thus entitled to challenge the government’s action under Fourth Amendment when the officer by means of physical force or show of authority terminates or restrains his freedom of movement.” *Brendlin v. California*, 551 U.S. 249, 254 (2007) (internal quotation marks and citations omitted).

An automobile stop is unreasonable for Fourth Amendment purposes unless the officer has probable cause to believe an offense has occurred such as a traffic offense. *Wren v. United States*, 517 U.S. 806, 809-10 (1996). When a traffic violation has been observed it is the reasonable basis for the stop, even though the real purpose of stopping the vehicle is to search for contraband. *Id.*, 812-13.

Here, however, no traffic offense had occurred. Nor was there other probable cause to justify the search. Mr. Herrera Farias has standing because “a passenger may bring a Fourth Amendment challenge to the legality of a traffic stop.” *Brendlin*, at 259 (citations omitted). This is because the passenger has also been “seized.” *Id.*, 258.

## CONCLUSION

Mr. Herrera Farias was “seized” when the Cadillac was stopped. This seizure violated the Fourth Amendment since there was no probable cause to justify his seizure. Evidence of Mr. Herrera Farias’ seizure should be suppressed.

Any possible connection to the pistol and suspected methamphetamine in the whiter Ford Ranger would be broken and irrelevant, FRE 401, 403, and, therefore,

1 should be excluded.

2 RESPECTFULLY submitted this 17<sup>th</sup> day of September 2018.

3 WALDO, SCHWEDA  
4 & MONTGOMERY, P.S.

5 By: /s/ Peter S. Schweda

6 PETER S. SCHWEDA  
7 Attorney for Defendant Herrera Farias  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on September 17, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

Joseph H. Harrington  
Acting United States Attorney  
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By: /s/ KATHLEEN SCHROEDER  
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